ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y
★ APR 19 2010 ★
BROOKLYN OFFICE

-- X

NIGEL THORPE & MITCHELL [illegible]

CV 10-1724

COMPLAINT

-against-

THE CITY OF NEW YORK, POLICE OFFICERS JOHN DOES 1-10,

Jury Trial Demanded

Defendants.

-- X

TRAGER, J.

GOLD, M.J.

PRELIMINARY STATEMENT

1. This is a civil rights action alleging that the City of New York and several New York City Police Officers of the 70th Precinct violated plaintiffs' rights under 42 U.S.C. § 1983, the First, Fourth, and Sixth Amendments to the United States Constitution, and New York State law. Specifically, plaintiffs allege that, on February 5, 2010, defendants violated their right to free speech, falsely arrested them, used unreasonable force on them, assaulted and battered them, and made false allegations about one or both of them to prosecutors. Plaintiffs seek compensatory and punitive damages, attorney's fees and costs, and such other and further relief as the court deems just and proper.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and the First, Fourth, and Sixth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343.

3. Plaintiffs invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide their New York State law claims of false arrest, assault, and battery.

4. With respect to plaintiffs' state law claims, a notice of claim was duly filed with the City of New York within 30 days after the arrests of plaintiffs, more than 30 days have elapsed since such filing, and the City has not offered to settle plaintiffs' state law claims.

5. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b) and (c).

PARTIES

6. Plaintiffs are residents of the State of New York who reside in Brooklyn.

7. The City of New York is a municipal corporation organized under the laws of the State of New York.

8. Police Officers John Does 1-10 are members of the New York City Police Department. Defendants were acting under color of state law and in their capacities as police officers at all relevant times. Defendants are liable for directly participating in the unlawful acts described herein and for failing to intervene to protect plaintiff from unconstitutional conduct. The defendants are sued in their individual capacities.

STATEMENT OF FACTS

9. On February 5, 2010, in the early evening, plaintiffs were standing on the sidewalk right near plaintiff Thorpe's residence at 400 Argyle Road in Brooklyn.

10. At all relevant times, plaintiffs were obeying the law and were not acting in a suspicious manner.

11. At the above time and place, two New York City Police Officers arrived on the scene in a patrol car.

12. The two officers exited the car.

13. Officer John Doe 1, a Latino who was the driver of the car, told plaintiffs "do not move," pushed Loizeau against a wall, and searched Loizeau without legal justification or consent.

14. Officer John Doe 2 pushed Thorpe against a wall and searched Thorpe without legal justification or consent.

15. Loizeau asked John Doe 1 for his badge number.

16. John Doe 1 covered his badge with his hand and laughed.

17. Thorpe asked the officers for permission to call his mother.

18. John Doe 1 told Thorpe "fuck your mother."

19. In further response to plaintiffs' exercise of free speech, John Doe 1 slammed Loizeau onto the ground and punched him repeatedly in the face.

20. Thorpe urged John Doe 1 to stop beating Loizeau.

21. During the beating of Loizeau, several other police officers arrived on the scene.

22. These officers observed John Doe 1 beating Loizeau but they failed to intervene to protect him.

23. Several of the officers rushed Thorpe, slammed him into a gate, brought him to the ground in a violent manner, and punched and kicked him several times on his face, head, and body.

24. At one point, John Doe 1 went over to Thorpe and repeatedly struck him with a baton on his face, head, and body.

25. After the beating, some of the officers, while other officers looked on, arrested plaintiffs for no reason and took them to the 70th Precinct.

26. An ambulance came to the 70th Precinct and Thorpe was taken to Maimonides Hospital.

27. While plaintiffs were in custody, their designated "arresting officer," pursuant to a conspiracy with the other officers involved in plaintiffs' beatings and arrests, prepared police reports which falsely stated that plaintiffs had committed a crime.

28. On February 6, 2010, at approximately 4:30 a.m., officers took Loizeau to Brooklyn Central Booking.

29. Loizeau was held in several cells in Central Booking, all of which were several overcrowded, filthy and unsanitary, and infested with pests. The toilets were covered in feces and urine and other types of human discharge and there were no beds for Loizeau and the other detainees to sleep on.

30. While Loizeau was confined in Brooklyn Central Booking, his designated "arresting officer," pursuant to a conspiracy with the other officers involved in plaintiffs' beatings and arrests, misrepresented to the Kings County District Attorney's Office that Loizeau had committed a crime.

31. On February 6, 2010, at approximately 11:00 a.m., Loizeau was released from Brooklyn Central Booking because the District Attorney's Office declined prosecution.

32. On February 6, 2010, at approximately 11:00 a.m., Thorpe was released from the 70th Precinct without being charged.

33. Both plaintiffs obtained medical treatment after they were released from custody.

34. Thorpe's physical injuries include a fractured nose, a concussion, lacerations to his face requiring stitches, contusions, swelling, and injuries to his mouth.

35. Loizeau experienced pain to his face, head, and neck for approximately two weeks after the incident.

36. In addition to the aforesaid physical injuries, plaintiffs suffered damage in the form of being deprived of their liberty, emotional distress, mental anguish, fear, anxiety, and humiliation.

FIRST CLAIM

(FALSE ARREST UNDER FEDERAL LAW)

37. Plaintiffs repeat the foregoing allegations.

38. Plaintiffs did not commit a crime on February 5, 2010 and no police officer observed plaintiffs acting in a manner that day which gave rise to probable cause.

39. Accordingly, defendants are liable to plaintiffs under the Fourth Amendment for false arrest.

SECOND CLAIM

(FALSE IMPRISONMENT UNDER STATE LAW)

40. Plaintiffs repeat the foregoing allegations.

41. Plaintiffs did not commit a crime on February 5, 2010 and no police officer observed plaintiffs acting in a manner that day which gave rise to probable cause.

42. Accordingly, defendants are liable to plaintiffs under New York State Law for false imprisonment.

THIRD CLAIM

(RETALIATION FOR USING FREE SPEECH UNDER FEDERAL LAW)

43. Plaintiffs repeat the foregoing allegations.

44. Plaintiffs exercised free speech on February 15, 2010 by, among other things, complaining about defendants' misconduct, requesting John Doe 1's badge number, and asking for Thorpe's mother.

45. Plaintiffs' use of free speech was a motivating factor in the defendants' decision to arrest and use force on plaintiffs.

46. Accordingly, defendants are liable to plaintiffs under the First Amendment for violating plaintiffs' right to free speech.

FOURTH CLAIM

(UNREASONABLE FORCE UNDER FEDERAL LAW)

47. Plaintiffs repeat the foregoing allegations.

48. Defendants' use of force upon plaintiffs, as described herein, was objectively unreasonable and caused injury to plaintiffs.

49. Accordingly, defendants are liable to plaintiffs under the Fourth Amendment for unreasonable force.

FIFTH CLAIM

(ASSAULT UNDER STATE LAW)

50. Plaintiff repeats the foregoing allegations.

51. Defendants' searches of plaintiffs and use of force upon them placed plaintiffs in fear of imminent harmful and offensive physical contacts.

52. Accordingly, defendants are liable to plaintiffs under New York State law for assault.

SIXTH CLAIM

(BATTERY UNDER STATE LAW)

53. Plaintiffs repeat the foregoing allegations.

54. Defendants' searches of plaintiffs and use of force upon them were wrongful physical contacts.

55. Accordingly, defendants are liable to plaintiffs under New York State law for battery.

SEVENTH CLAIM

(FABRICATION OF EVIDENCE UNDER FEDERAL LAW)

56. Plaintiffs repeat the foregoing allegations.

57. Defendants, pursuant to a conspiracy, falsely stated to the Kings County District Attorney's Office that plaintiffs had committed a crime.

58. Accordingly, defendants are liable to plaintiffs under the Sixth Amendment for fabricating evidence against plaintiffs and attempting to deny them a fair trial.

EIGHTH CLAIM

(MONELL CLAIM AGAINST THE CITY OF NEW YORK)

59. Plaintiffs repeat the foregoing allegations.

60. The City of New York, through a policy, practice and custom, directly caused the constitutional violations suffered by plaintiffs.

61. Upon information and belief, the City of New York, at all relevant times, was aware that the defendants are unfit officers who have previously committed the acts alleged herein and/or have a propensity for unconstitutional conduct.

62. Nevertheless, the City of New York exercised deliberate indifference by failing to take remedial action. The City failed to properly train, retrain, supervise, discipline,

and monitor the defendants and improperly retained and utilized them. Moreover, upon information and belief, the City of New York failed to adequately investigate prior complaints filed against the defendants.

63. In addition, the following are City policies, practices and customs:

(a) arresting innocent individuals, primarily minorities like plaintiffs, on the pretext that they trespassed, possessed or sold drugs, or possessed weapons, in order to meet productivity goals;

(b) fabricating evidence against individuals;

(c) using excessive force on individuals;

(d) unlawfully strip searching pre-arraignment detainees;

(e) retaliating against individuals who engage in free speech;

(f) unlawfully entering and searching homes and being unnecessarily destructive.

NINTH CLAIM

(STATE LAW RESPONDEAT SUPERIOR CLAIM AGAINST CITY OF NEW YORK)

64. Plaintiffs repeat the foregoing allegations.

65. Defendants were acting within the scope of their employment as New York City Police Officers when they falsely arrested and assaulted and battered plaintiffs.

66. The City of New York is therefore vicariously liable under state law for false arrest, assault and battery.

WHEREFORE, plaintiffs demand a jury trial and the following relief jointly and severally against the defendants:

a. Compensatory damages in an amount to be determined by a jury;

b. Punitive damages in an amount to be determined by a jury;

c. Attorney's fees and costs;

d. Such other and further relief as the Court may deem just and proper.

DATED: April 17, 2010

RICHARD J. CARDINALE
Attorney at Law
26 Court Street, Suite 1815
Brooklyn, New York 11242
(718) 624-9391